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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,680	09/13/2001	Johannes Hendrikus Martinus de Pauw Gerlings	7303-3	9992

7590 10/02/2003

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EXAMINER

HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 10/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

857680

Applicant(s)

Gerling

Examiner

H. A. Dickson

Group Art Unit

1754

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 8/1/03, 9/8/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 16, 18, 20-30 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 16, 18, 20-30 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 16, 18 and 20-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over So et al. in view of Bunger et al.

So teaches in columns 2, 3 preparing a 60% solution of a carbohydrate such as those claimed and adding lime, then carbon dioxide. This differs only in not explicitly exemplifying the claimed polyhydroxy, rather generally disclosing them among a list. However, choosing a reagent disclosed is an obvious expedient; In re Boesch 205 USPQ 215.

So does not teach the source of the lime, however Bunger teaches carbide lime in column 2, and limestone as a source in column 1. See also column 5. Using any Ca source (such as that of Bunger) in the process of So is an obvious expedient to produce a valuable carbonate material.

Applicant's arguments filed 9/8/03 have been fully considered but they are not persuasive. The references are combinable because one reference makes a purified calcium source and the other uses it, which is an obvious expedient- see In re Kamlet 88 USPQ 106. Essentially, column 5 of Bunger explains the economic rationale of using a cheap source, and it appears that applicants have made the analysis and determined that carbide lime is sufficiently cheap that the additional steps of purifying it do not make the process inefficient. So long as the calcium can be made sufficiently pure to meet standards, using it for foods is an obvious expedient, in accordance with the analysis. Bunger indeed teaches making highly pure calcium product from carbide lime, so the references are combinable.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (703) 308-2539. or 571-272-1351.



Stuart Hendrickson  
examiner Art Unit 1754